IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1439 OF 2003

Ramchandra Pundalik Kadam
Age about 49 years,
Occ:- Agriculture,
R/o. Kurang, Tal. Lanja,
Dist. Ratnagiri
presently in Jail at Kolhapur ...Appellant.

V/s

1. State of Maharashtra

2. Nandini Gangaram Chalke
R/at Kurang Varchi Wadi,
Taluka Lanja, Dist: Ratnagiri ...Respondents

Mr. Ganesh Gole, advocate appointed for the appellant.

Mr. Rajesh More, APP for the State.

CORAM: V.M. KANADE, J.

DATE: 10th January, 2006

ORAL JUDGMENT:

1. The appellant is challenging the judgment and order passed by the Sessions Judge Ratnagiri in Sessions Case No.6 of 2002. By the said judgment and order dated 18/2/2003, the Sessions Judge Ratnagiri was pleased to convict the accused for an offence punishable under section 376 of the I.P.C. and sentenced him to suffer rigorous imprisonment for 7 years and to pay fine of Rs 13000/- and in default of payment of fine he was to undergo further sentence of

rigorous imprisonment for 1 year. He was also convicted for the offence punishable under section 452 and sentenced to suffer rigorous imprisonment for six months and to pay fine of Rs 1000/- and, in default of payment of fine, to undergo rigorous imprisonment for one month. He was also convicted for an offence punishable under section 506 of the I.P.C. and sentenced to suffer rigorous imprisonment for six months and to pay fine of Rs 1000/- and in default of payment of fine to suffer rigorous imprisonment for 1 month.

2. The prosecution case in brief is that the prosecutrix was the resident of village Kurang, Taluka Lanja. The prosecutrix was deaf and dumb girl by birth and the complainant who was the step mother of the prosecutrix noticed that there was a change in the body of the prosecutrix and she felt that the prosecutrix was pregnant. They, therefore, took her to a doctor who examined her and informed them that the prosecutrix was pregnant. Thereafter, the prosecutrix was referred to the Government Hospital and there the pregnancy was confirmed. The doctor from the Government Hospital informed the parents that if they wanted to terminate the pregnancy they should take the prosecutrix to the Government Hospital at

Ratnagiri. Thereafter, inquiries were made by the complainant and her husband and the prosecutrix by sign language informed that the present appellant had committed rape on her and she described the features of the appellant. Thereafter, the complainant and her husband tried to persuade the present appellant to pay for the expenses of abortion. However, the appellant declined to pay the said charges. Thereafter, a child was born to the prosecutrix and, after the child was born, the appellant was asked to give financial assistance to the prosecutrix. However, after the appellant declined to render the financial assistance, a complaint was lodged at the Lanja Police Station on 25/8/2001. The accused was arrested and the statement of witnesses were recorded.

3. The learned Counsel appointed to appear on behalf of the appellant as an amicus curiae has taken me through the judgment and order of the trial court as also the oral and documentary evidence which is brought on record. The step mother of the prosecutrix who had filed the complaint has stated in her evidence that she noticed while the prosecutrix was taking bath, that there was a change in her body and thought that the prosecutrix was pregnant. She, alongwith her husband, therefore, took her to the doctor and she was

examined by Dr. Patil. In her evidence she has stated that, initially, they had demanded from the appellant an amount of Rs 3000/- towards the medical expenses for the termination of the pregnancy of the prosecutrix. However, this amount was not paid. Even, thereafter, the complaint was not filed. Thereafter, the child was born to the prosecutrix and, again, they had asked for financial assistance from the accused and only thereafter the complaint was filed on 25/8/2001. There is no other evidence to indicate that the appellant had committed rape on the prosecutrix. It is an admitted position that the prosecutrix was 16 years of age on the date of the incident. The prosecutrix, admittedly, is a deaf and dumb person. No complaint had been filed by her earlier and, only after her step mother noticed that she was pregnant, she has described the appellant as a person who had committed rape.

4. Considering the fact that there was a delay in filing the FIR and further fact that the complainant had demanded financial assistance from the accused, it creates a doubt regarding the involvement of the appellant in the commission of the said offence. Further, the prosecutrix was admittedly 16 years of age. There is no other medical evidence to implicate

the present appellant for the offence of rape or for the offence punishable under section 451 and 506 of the I.P.C. In my view, the prosecution has not proved beyond the reasonable doubt that the appellant has committed the aforesaid offence and he is, therefore, acquitted of the offence with which he was charged. The judgment and order of the trial court is set aside. The appellant is acquitted and may be released forthwith unless he is otherwise required in any other case.

V.M. KANADE, J.